IN THE

# Supreme Court of the United States

OCTOBER TERM, 1905.

(No. 3070)

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**FRANKLIN McNEILL ET ALS.,**

**MEMBERS OF THE NORTH CAROLINA CORPORATION COMMISSION,**

*versus*

**SOUTHERN RAILWAY COMPANY.**

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## MOTION TO ADVANCE CAUSE.

The plaintiffs, appellants, move the Court to advance this cause for hearing, and assign the following reasons for the motion:

Franklin McNeill, Samuel L. Rogers, and E. C. Beddingfield are the members of the North Carolina Corporation Commission, which was created by an act of the General Assembly of North Carolina at its session in 1899, chapter 164. The Commission was given certain powers, enumerated by the act, over certain classes of corporations, and among other things was given the authority to require the construction and use by railroad companies of sidetracks along their lines within the State of North Carolina.

The North Carolina Corporation Commission ordered the Southern Railway Company, in October, 1903, to place four cars of coal consigned to the Greensboro Ice and Coal Company, at Greensboro, N. C., which were held on the yards of the Southern Railway Company. The Southern Railway Company tendered the cars upon one sidetrack, but refused to place them

upon the particular private sidetrack designated by the North Carolina Corporation Commission.

Under the act creating the North Carolina Corporation Commission, it is given no authority to enforce its orders except by suits for penalties against those who refuse to obey it. The Southern Railway Company brought this suit in equity in the Circuit Court of the United States in the Eastern District of North Carolina against the North Carolina Corporation Commission and the individuals who are the members of it, to enjoin the bringing of alleged threatened suits to enforce penalties against the Southern Railway Company for its refusal to obey the order of the Commission with respect to placing the said four cars of coal, alleging, among other things, that the order to place the carloads of coal was an interference with interstate commerce and in violation of the provisions of the Constitution of the United States. A final decree was signed in this suit enjoining the North Carolina Corporation Commission and the members thereof from bringing any action to collect any penalty against the Southern Railway Company, alleged to have been incurred by reason of its failure to obey the order with respect to the said four cars of coal; the language of said decree being in part as follows:

> "And they and their successors in office are, and each and all of them, and any of them combined, hereby perpetually enjoined and restrained from requiring, authorizing, permitting, requesting or inducing the Attorney-General of North Carolina or his successors in office to constitute or bring any suit or suits, on relation of the North Carolina Corporation Commission, and the recovery of any damage or penalties from the Southern Railway Company by virtue of any provision of the act of the General Assembly of North Carolina, Public Laws 1899, chapter 164, or any amendments to said act; and each and all of them, and any of them combined, and their successors

in office, are hereby perpetually enjoined and restrained from attempting to apply the provisions of any rules, orders and regulations of the North Carolina Corporation Commission relating to the placing of cars for loading or unloading and fixing on the time limit for delivery of freight after same may have been received by the transportation companies for shipment, or any other rules, regulations of said North Carolina Corporation Commission, to any equipment or any of the operations or transactions of the railroad company while same are engaged in interstate commerce.

And said defendants, McNeill, Rogers, and Beddingfield, and their successors in office, are hereby perpetually enjoined and restrained from in anywise interfering with any of the interstate commerce whatsoever of the Southern Railway Company, or the receiving, delivering, storage, or handling thereof."

Many of the acts and things heretofore done by the North Carolina Corporation Commission, and the powers conferred on it by the act creating it, relate to the handling and storing of freight and the use of sidetracks by railroad companies, upon the idea that this was not an interference with interstate commerce, but that the exercise of this power by the Corporation Commission was a duty imposed upon it by the act creating it, and was required for the convenience of shippers and the good of the public.

The North Carolina Corporation Commission is a very important department of the government of the State of North Carolina, and by reason of the injunction issued against it in this action it is embarrassed in the exercise of what it regards its lawful powers, and the performance of its duties, and it is important to it and to the people of the State of North Carolina that it should know by a decision of the Supreme Court of the United States whether it has transgressed the limits set for it by the Constitution of the United States, that it may proceed at once to exercise the duties imposed on it by the act creating it,

in so far as it may do so without violating the Constitution of the United States.

Wherefore, the appellants move the Court that this cause may be advanced, and that as early an argument of the same may be had as is convenient to this Court.

This November 15th, 1905.

ROBERT D. GILMER,
*Attorney-General.*
RICHARD H. BATTLE,
E. J. JUSTICE,
*Attorneys for Appellants.*

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IN THE

# Supreme Court of the United States,

OCTOBER TERM, 1905.

(No. 370)

Office Supreme Court U. S.
FILED
MAR 28 1906
H. H. McKENNEY,
Clerk.

FRANKLIN McNEILL, SAMUEL L. ROGERS, EUGENE C. BEDDINGFIELD, AND THE GREENSBORO ICE AND COAL COMPANY,

APPELLANTS,

*versus*

SOUTHERN RAILWAY COMPANY.

(No. 594)

SOUTHERN RAILWAY COMPANY

*versus*

FRANKLIN McNEILL, SAMUEL L. ROGERS, EUGENE C. BEDDINGFIELD, AND THE GREENSBORO ICE AND COAL COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NORTH CAROLINA.

## BRIEF FOR APPELLANTS IN No. 370, APPELLEES IN No. 594.

ROBERT D. GILMER,
Attorney-General of North Carolina,

R. H. BATTLE,
Solicitors for the Members of the N. C. Corporation Commission.

E. J. JUSTICE,
Solicitor for N. C. Corp. Com. and Greensboro Ice and Coal Co.

E. M. UZZELL & CO., PRINTERS, RALEIGH.

IN THE

# Supreme Court of the United States,

OCTOBER TERM, 1905.

(No. 370)

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**FRANKLIN McNEILL, SAMUEL L. ROGERS, EUGENE C. BEDDINGFIELD, AND THE GREENSBORO ICE AND COAL COMPANY,**

**APPELLANTS,**

*versus*

**SOUTHERN RAILWAY COMPANY.**

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NORTH CAROLINA.

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(No. 594)

**SOUTHERN RAILWAY COMPANY**

*versus*

**FRANKLIN McNEILL, SAMUEL L. ROGERS, EUGENE C. BEDDINGFIELD, AND THE GREENSBORO ICE AND COAL COMPANY.**

## BRIEF FOR APPELLANTS IN No. 370, APPELLEES IN No. 594.

This was a suit in equity brought by the complainant, South ern Railway Company, a citizen of Virginia, against the Green boro Ice and Coal Company, a corporation formed under th laws of North Carolina, doing business of buying and sellin coal and manufacturing ice in the city of Greensboro, N. C and against Franklin McNeill, Samuel L. Rogers, and Euge C. Beddingfield, as members of the North Carolina Corporatio Commission.

The North Carolina Corporation Commission was created b chapter 164 of the Public Laws of North Carolina enacted a the session of the General Assembly of North Carolina in 189 and by the acts amendatory thereof, and an election held i pursuance thereof. The parts of the said act which need be s out here are as follows:

> *The General Assembly of North Carolina do enact:*
>
> SECTION 1. That there shall be elected by this General Assembly three Commissioners, who shall have general supervision of railroads, steamboat navigation and canal companies, express and telegraph and telephone companies, building and loan associations, banks and sleeping-car companies. That the said Commissioners elected by this Assembly, and their successors in office, shall be and they are hereby created and constituted a court of record, and shall be known as the North Carolina Corporation Commission, and as such shall have all the powers and jurisdiction of a court of general jurisdiction as to all subjects embraced in this act, and shall have a common seal. * * * Said Commissioners shall not jointly or severally or in any way be the holder of any stock or bond or be the agent or attorney or employee of any such company or have any interest in any way in such company and shall so continue during the term of his office, and in case any Commissioner shall, as distributee or legatee or in any other way, have or become entitled to any stock or bonds or interest

therein of any such company, he shall at once dispose of the same. They shall have such general control and supervision of all railroad, steamboat, canal, express and sleeping-car companies or corporations and of all other companies or corporations engaged in the carrying of freight or passengers; of all telegraph and telephone companies, of all public and private banks and all loan and trust companies or corporations, and of all building and loan associations or companies necessary to carry into effect the provisions of the act. They shall investigate the books and papers of all such companies, individuals, firms or corporations, and they shall visit in person from time to time the place of business of such companies, individuals, firms or corporations, to ascertain if all orders, rules and regulations of the North Carolina Corporation Commission have been complied with, and shall have full power and authority to examine all officers, agents and employees of such companies, individuals, firms or corporations, and all other persons under oath or otherwise, and to compel the production of papers and the attendance of witnesses, to obtain the information necessary for carrying into effect and otherwise enforcing the provisions of this act.

SEC. 2. That said Commission is hereby empowered and directed:

(1) To make reasonable and just rates of freight, passenger and express tariffs for railroads, steamboats, canal and express companies or corporations, and all other transportation companies or corporations engaged in the carriage of freight, express or passengers: *Provided*, that in fixing any maximum rate of charge or tariff of rates or charges for any common carrier, person or corporation subject to the provisions of this act the said Commission shall take into consideration if proved or may require proof of the fair value of the property of such carrier, person or corporation used for the public in the consideration of such rate or charge or the fair value of the service rendered as in determining the fair value of the property so being used for the convenience of the public. It shall furthermore consider the original cost of the construction thereof and the amount expended in permanent improvements thereon and the present compared with the original cost of construction of all its property within the State of North Carolina; the probable earning capacity of such property under the

particular rates proposed and the sum required to meet the operating expenses of such carrier, person or corporation, and all other facts that will enable them to determine what are reasonable and just rates, charges and tariffs.

(2) To make reasonable and just rules as to charges by any company or corporation engaged in the carriage of freight or express for the necessary handling and delivery of the same at all stations.

(3) To make reasonable and just rules and regulations to prevent discrimination in the transportation of freight or passengers.

(4) To make reasonable and just rates of charges for the use of railroad cars carrying freight or passengers.

(5) To make reasonable and just rules and regulations to prevent the giving, paying or receiving of any rebate or bonus directly or indirectly or the misleading or deceiving the public in any manner as to real rates charged for freight, express or passengers.

(6) To make just and reasonable through rates for the transportation of freight, express or passengers.

(7) To make just and reasonable rules and regulations for the handling of freight and baggage at stations.

(8) To make just and reasonable rates of charges for the transportation of packages by any express company or corporation.

(9) To make just and reasonable rules and regulations as to contracts entered into by any railroad company or corporation to carry over its line or any part thereof the car or cars of any other company or corporation.

(10) To make just and reasonable rates of charges for the transmission of messages by any telegraph or telephone company or corporation doing business in this State. * * *

(15) To require the construction of side-tracks by any railroad company to industries already established or to be established: *Provided*, it is shown that the proportion of such revenue accruing to such side-track is sufficient within five years to pay the expenses of its construction. This shall not be construed to give the Commissioners authority to require railroad companies to construct side-tracks more than five hundred feet.

The only means the North Carolina Corporation Commission has of enforcing its orders and rules is by suit or suits in the name of the State of North Carolina on relation of the Corporation Commission, regularly brought in the Superior Courts of the State. Provision is made for an appeal to be taken from an order of the North Carolina Corporation Commission, by any one interested, to the Superior Court of the State, where trial by jury may be had.

The facts out of which this suit grew are fully set out in the report of the Standing Master in equity, beginning on page 62 of the record, and in the decree and opinion of the United States Judge, beginning on pages 452 and 438 of the record.

These principal facts, as gathered from the Master's report, the decree and the opinion of the United States Judge, and the evidence in this case are:

That on October 12, 1903, the Southern Railway Company notified the Greensboro Ice and Coal Company that from and after October 17, 1903, the Southern Railway Company would decline to switch any cars on the private siding of the Greensboro Ice and Coal Company. (See page 256 of the record).

On October 20, 1903, the Greensboro Ice and Coal Company made complaint to the North Carolina Corporation Commission that four cars of coal consigned to it were held by the Southern Railway Company, and in that communication, and another one of October 24, fully set out that the reasons for this withholding was an alleged indebtedness to the Southern Railway Company of $146, which the Greensboro Ice and Coal Company asserted was not due. A full statement of the dispute out of which this alleged indebtedness grew appears in the correspondence between the ice and coal company and the North Carolina Corporation Commission. (See pages 294 to 301).

On October 31, 1903, the Corporation Commission
the four cars of coal to be placed on the siding of the Gre
Ice and Coal Company, for the purpose of being unloa
serving for trial the question of the alleged indebtednes
Southern Railway Company by the Greensboro Ice an
Company of $146.

A part of this order is as follows:

> It is therefore ordered that the Southern Railw
> Company upon the payment of the freight due on sa
> cars of coal, and within forty-eight hours after servi
> of this order, place the four cars of coal consigned
> the Greensboro Ice and Coal Company on tracks pr
> vided by complainant and defendant for the loadi
> and unloading of the freight of the complainant, to th
> end that the same may be unloaded and the complai
> ant receive *their* freight.
>
> FRANKLIN McNEILL,
> *Chairman N. C. Corporation Commission.*

(See pages 301 and 302).

The Southern Railway Company declined to obey this
(See page 303).

On November 2, 1903, the Southern Railway Compan
peared before the North Carolina Corporation Commissio
filed exceptions to the order of the North Carolina Corpo
Commission of October 31, and asked that the said ord
reviewed and vacated. (See page 304). Proceedings had
these exceptions appear on pages 307, 308 and 309.

On December 10, 1903, the North Carolina Corporation
mission, after having fully heard evidence for both sides
arguments of counsel, reaffirmed its order of October 31,
and fully recited the facts and previous proceedings theret
had. (See page 309).

This last order of the North Carolina Corporation Com
sion dealt with the dispute as to the indebtedness, and is in
as follows:

"The freight charges on the fourteen cars were paid, but Southern Railway claimed $146 demurrage on thirteen of the fourteen cars, which charges Greensboro Ice and Coal Company refused to pay, alleging that they were improper and illegal.

"We are of the opinion that no demurrage should be demanded, as Southern Railway did not place the cars at the place designated by the shipper. We recognize the right of the Southern Railway Company to refuse to deliver freight until all proper charges for freight and demurrage are paid, but it has no right to demand the payment of improper demurrage charges on thirteen cars already delivered, as a condition precedent to the delivery of four cars of coal involved in the order in this case, or to refuse to deliver the four cars on the side-track jointly built and owned by the Greensboro Ice and Coal Company and themselves, when they were requested to do so.

"It is therefore ordered that the exceptions be and they are hereby overruled."

From this last order of the North Carolina Corporation Commission the Southern Railway Company appealed to the Superior Court of Guilford County. (See page 312).

That portion of the printed record from page 294 to 313, inclusive, is a transcript of the record and proceedings before the North Carolina Corporation Commission.

That portion of the printed record from page 314 to 424, inclusive, is a copy of the testimony taken before the North Carolina Corporation Commission upon the trial, prior to rendering the order of December 10, 1903.

That part of the printed record from page 425 to 430, inclusive, is a transcript of the proceedings had in the Superior Court of Guilford County, upon the appeal by the Southern Railway Company from the order of the North Carolina Corporation Commission, of December 10, 1903.

Suit was brought in the Circuit Court of the United States for the Eastern District of North Carolina, by the Southern Railway Company, against the members of the North Carolina

Corporation Commission and the Greensboro Ice and Co
pany, to enjoin the bringing of actions for penalties for
to comply with these orders of the North Carolina Corp
Commission.

The suit was referred to a Standing Master to hear e
and report the same, together with his findings of fact
Court. The evidence taken before the Standing Mas
substantially that taken before the North Carolina Corp
Commission.

The Master's report begins on page 62 of the record.

The Southern Railway Company excepted to the M
report. These exceptions are set out in the record, beg
on page 431.

The opinion of the United States Judge, beginning o
438, sets out most of the material facts found by the
and makes the injunction theretofore issued by him per

The Southern Railway Company does not complain
finding of facts in the opinion of the Judge.

The following language will be found in this opinion:

> "Every day between the hours of twelve noon an
> one-thirty, the Southern Railway Company has, arri
> ing at Greensboro, N. C., several mail trains and fou
> trains carrying interstate freight. All of these trai
> arrive about the same time, and if the Southern Rai
> way was obliged to get a car out of one of these train
> or was obliged to place a car on a certain siding at
> certain time between these hours, under the orde
> and directions of the private shipper, or under th
> orders and directions of the North Carolina Corpor
> tion Commission, and irrespective of its own reasona
> ble rules and regulations, it would mean detention an
> delay and damage not only to interstate freight, bu
> the United States mail and passengers. Ordinarily
> during other hours, except in cases of unusual con
> gestion, which rarely occurs, cars can be placed on th
> said spur-track and trestle within twenty-four hour
> after their arrival, without interfering with the busi
> ness of the railroad company, either State or inter

state, and it does not inconvenience the railroad, or interfere with its track or business, to place cars on the said spur-track and trestle, any more than it would on any other spur-track, that is to say, that this can be done in due course of business and under reasonable rules and regulations of the company.

"In the event of congested condition by reason of the number of flat cars shipped to Greensboro, such condition would be relieved to some extent by using the said spur-track or siding of the ice and coal company, for the purpose of placing the said company's car on the siding.

"The Greensboro Ice and Coal Company does a business which involves a shipment to it of about two hundred cars per year, according to the testimony. It pays freight in the neighborhood of $15,000 per year.

"The amount of the profits of the ice and coal company does not appear in evidence, but the business transacted largely exceeds the sum of two thousand ($2,000) dollars, the freight paid by the company being about fifteen thousand ($15,000) dollars per year. If the ice and coal company had to unload all of its freight on the team-tracks other than the siding and trestle in question, the said company could not profitably conduct its business. The amount of loss or inconvenience to either party by actually placing the four cars in question upon the side or spur-track or by failure to place the same, would not, and did not, amount to two thousand ($2,000) dollars.

"The North Carolina Corporation Commission has not, so far as the testimony discloses, attempted to interfere with the business or management of the plaintiff company, except to the extent of requiring it to place the said four cars on the defendant company's siding, nor has the defendant company asked any further interference with said business management. The extent of said interference will more particularly appear by the order made by the North Carolina Corporation Commission.

"On October 31, 1903, the North Carolina Corporation Commission, upon complaint of the said ice and coal company, made an order requiring the Southern Railway, within forty-eight hours after service of said order, to place four cars of coal consigned to the

Greensboro Ice and Coal Company, on the private siding or spur-track of the Greensboro Ice and Coal Company, at Greensboro, N. C.

"One of said cars belonged to the Southern Railway Company, two were the property of the Norfolk and Western Railway Company, and one the property of the Chesapeake and Ohio Railway Company. * * *

"The four cars comprehended by the said order of the North Carolina Corporation Commission were loaded with coal in the States of Pennsylvania, West Virginia and Tennessee respectively, and each of said cars of coal was transported over lines of the Southern Railway Company and connecting lines, as one continuous uninterrupted journey through several different States to Greensboro, North Carolina.

"At the time said order of said North Carolina Corporation Commission was made, and both prior and subsequent thereto, the said coal remained loaded on the cars in the original unbroken package in which it began its continuous uninterrupted journey from the States of Tennessee, West Virginia and Pennsylvania, and said coal and said cars were still in the possession of the Southern Railway Company undelivered to consignee. * * *

"The Southern Railway Company declined to switch these cars upon the private siding or trestle of the ice and coal company, because it was claimed the latter company had refused to comply with the rules of the North Carolina Car Service Association adopted by the Southern Railway Company to expedite the use of equipment in the public interest. * * *

"The Southern Railway Company, on October 12, 1903, issued a notice to the ice and coal company that, commencing at 12 noon, October 17, 1903, it would only deliver cars on the public team-tracks of the Southern Railway Company, at Greensboro, N. C. * * *

"Said four cars of coal came on the yards of the Southern Railway Company at Greensboro, North Carolina, after October 17, 1903. Proper notices were sent to the said ice and coal company of their arrival, and the cars were marked up to the public team-tracks of the Southern Railway Company at Greensboro, and actually placed thereon, and the delivery tendered to the ice and coal company. The

ice and coal company declined to receive or unload said cars at any other point whatsoever except on their private siding or trestle.

"The refusal to unload said cars was not because of any defect in the notices, but, because the ice and coal company required and demanded that the said cars should be placed on their private track or trestle. Said four cars of coal reached Greensboro, North Carolina, between October 18 and October 22, 1903, and were placed on the public team-tracks, and there remained, for the purpose of being unloaded by the ice and coal company, until November 2, 1903, when they were removed because they were blocking the team-tracks and interfering with the public use thereof. * * *

"The notice of October 12, 1903, declining to switch cars to the private siding of the ice and coal company, and the refusal to deliver the four cars in question, was alleged to have been based upon the refusal of the ice and coal company to pay an account for demurrage of some one hundred and forty-six dollars claimed to be due on certain thirteen cars previously delivered. This claim was denied on the part of the ice and coal company.

"The ice and coal company was solvent and was so known to the Southern Railway Company.

"When the four cars arrived the work upon the siding and trestle had been completed and they were in good condition for delivery and for unloading of coal, and it was so known to the agents of the railway company which had control of placing cars.

"At that time the Southern Railway could have switched said cars on the siding within twenty-four hours after their arrival, and the ice and coal company could have unloaded the coal and left them to the control of the railway company within three hours after they were so switched respectively.

"It would in no way have interfered with the prompt, economical, and easy handling of this or other freight or business for the Southern Railway to have placed the four cars as requested.

"The trestle can, in the ordinary course of business, be used by the Southern Railway Company for unloading freight consigned to the ice and coal company with ease, and such freight can be unloaded there in less time than would be required in unloading it elsewhere.

"It is easier to unload coal from the trestle of the ice and coal company than from the public team-tracks. * * *

"There was no written or expressed contract on the part of the Southern Railway Company in respect to the use of the said track, but considering all of the circumstances, induces the Master to find, 'that there was an implied agreement that said track should be adopted and treated, so far as the ice and coal company was concerned, as a track for the delivery of its cars upon its trestle, under the reasonable rules and regulations of the said Southern Railway Company, this implied agreement to continue so long as the said track was maintained by mutual consent.' * * *

"It is the custom of the Southern Railway Company to construct private sidings for the use of shippers of large quantities of freight, but it is not the policy of the said railway to do so except under contract, the printed form of which is in evidence, such contract containing a provision securing the acquisition of necessary rights-of-way, etc."

These findings of fact, set out in the opinion and decree, the appellants are content with, and it seems that the appellee is also, as it has not appealed from such findings.

On page 447, in the opinion of the Judge, appears the following:

"To the report of the Standing Master, complainant filed twelve exceptions. Defendants filed no exceptions."

The fifth exception is to the finding of the Master that, had the $146 demurrage been paid the four cars in question would, in the opinion of the Master, have been delivered on the trestle of the ice and coal company as requested, and the refusal to so deliver was solely on that ground. This exception is sustained. All of the evidence sustained the Master in this finding, and the exception of the Southern Railway Company should have been overruled.

e original notice to the Greensboro Ice and Coal Com-—that from and after October 17th cars would not be d on the siding—is printed several times in the record; as a part of the testimony of R. P. Albright, manager of Jorth Carolina Car Service Association, on page 79 of the d, and this, taken in connection with the testimony of Mr. ght on that page and on pages 83, 86 and 87 of the record, lso with the letter of November 11, 1903, addressed to the nsboro Ice and Coal Company by W. E. Coffin, agent, and stimony of M. W. Thompson on page 127, and two letters W. E. Coffin, agent, November 3, 1903, addressed to the nsboro Ice and Coal Company, appearing on pages 128 and fully justify the Master's finding. These last letters ex- the position of the Southern Railway Company through- vith regard to placing the four cars of coal, which are the et of the North Carolina Corporation Commission's orders tober 31 and December 10, 1903. They are as follows:

GREENSBORO, N. C., November 3, 1903.

THE GREENSBORO ICE AND COAL COMPANY.

GENTLEMEN:—Your letter of this date directing us o place N. & W. 10725, and 1902 and 6783 on your hute. Beg to advise that we cannot comply with your equest until the old account for car service is paid. When this is paid we will have them placed as per our order.

Yours truly,

W. E. COFFIN, *Agent.*

GREENSBORO, N. C., November 3, 1903.

GREENSBORO ICE AND COAL COMPANY,

*Greensboro, N. C.*

GENTLEMEN:—Referring to the three (3) cars of oal not yet ordered, the Nos. as follows:

N. & W. 10725, 11502, 6783. These cars are vaiting your order to be placed on our team-track de- ivery. If you wish them placed, give us written or-

der. If you wish them placed on your private siding, we must insist that you pay the car service due on the old account.

Yours truly,

W. E. COFFIN, *Agent.*

There is no evidence in the case sustaining the ruling of the Judge, in the Circuit Court, overruling the findings of the Master above referred to: that the four cars in question would have been delivered on the trestle of the ice and coal company if the demurrage claimed on account of other cars, amounting to $146, had been paid, and that the refusal to so deliver was solely on that ground.

The twelfth exception of the Southern Railway Company, to the Master's report, is to the findings of the Master which relate in any way to the thirteen cars, which arrived in Greensboro, consigned to the Greensboro Ice and Coal Company, between the 9th and 19th days of September, 1903, and which had been delivered prior to the arrival in Greensboro of the four cars of coal, which are the subject of the order of the North Carolina Corporation Commission. The Judge presiding in the Circuit Court, as appears on page 447 of the record, sustained this exception.

Inasmuch as the Southern Railway Company based its refusal to comply with the orders of the North Carolina Corporation Commission upon the ground that it was justified in holding these four cars until $146 demurrage charges, claimed to be due on account of the handling of thirteen other cars, was paid, it became material to determine whether the amount was due. Now that this question has been determined against the Southern Railway Company by the North Carolina Corporation Commission, after full hearing, as appears from its order of December 10, 1903, the contention is made and sustained by the Judge presiding in the Circuit Court that this question of

indebtedness is wholly immaterial. If the matter of the indebtedness of $146 claimed by the Southern Railway Company to be due it, is immaterial; or, if, as determined by the North Carolina Corporation Commission, the amount claimed is not due, then the question of law presented to the Court is whether the Southern Railway Company can, in view of the facts found by the Master, and by the Judge in the Circuit Court, recited above, refuse to comply with the order of the North Carolina Corporation Commission.

There are findings of fact by the Master repeated by the Judge in the Circuit Court, appearing on pages 438 and 439, that:

> "The right of the Greensboro Ice and Coal Company, or of an individual shipper or consignee, to have cars transferred and switched upon private sidings or spur-tracks, irrespective of the rules and regulations of the Southern Railway Company, involves the right of the Southern Railway Company to conduct its business, both State and interstate. If all shippers or consignees in North Carolina had the right to have cars switched and placed according to their orders, and irrespective of the rules and regulations of the Southern Railway Company, it would entail a loss to the Southern Railway Company much in excess of two thousand ($2,000) dollars. The right of the Southern Railway Company to conduct and manage its interstate business at Greensboro, N. C., and various stations in the said State, amounts in value to many thousands of dollars, far in excess of two thousand ($2,000) dollars.
>
> "The right of the Southern Railway Company to conduct its interstate business at Greensboro, to dispose of its rolling stock and distribute it, and to refuse to permit its cars to be placed on private sidings, according to its reasonable rules, is of great value to them, and amounting to many thousands of dollars, far in excess of two thousand ($2,000) dollars.
>
> "Every day between the hours of twelve noon and one-thirty the Southern Railway Company has, arriving at Greensboro, N. C., seven mail trains and four trains carrying interstate freight. All of these trains

> arrive about the same time, and if the Southern Railway was obliged to place a car on a certain siding at a certain time between these hours under the orders and directions of the private shipper, or under the orders and direction of the North Carolina Corporation Commission, and irrespective of its own reasonable rules and regulations, it would mean detention and delay and damage, not only to interstate freight, but the United States mail and passengers."

These findings have no application in this case in view of the fact that the order of the North Carolina Corporation Commission complained of is as follows:

> "It is therefore ordered that the Southern Railway Company, upon the payment of the freight due on said cars of coal, and within forty-eight hours after service of this order, place the four cars of coal consigned to the Greensboro Ice and Coal Company on tracks provided by complainant and defendant for the loading and unloading of the freights of the complainant, to the end that the same may be unloaded and the complainant receive their freights."

Findings of the Master and the United States Judge, which are material in determining the reasonableness of this order of the North Carolina Corporation Commission, and the reasonableness of the refusal of the Southern Railway Company to comply therewith, are:

> "1st. When the four cars arrived the work upon the said trestle had been completed and they were in good condition for delivery and for unloading coal, and was so known to the agents of the railway company which had control of placing cars.
>
> "2d. At that time the Southern Railway Company could have switched said cars on the siding within twenty-four hours after their arrival, and the ice and coal company could have unloaded the coal and left them to the control of the Southern Railway Company within three hours after they were so switched respectively.
>
> "3d. It would in no way have interfered with the prompt, economical and easy handling of those or

other freight or business for the Southern Railway Company to have placed the four cars as requested.

"4th. The trestle can, in ordinary course of business, be used by the Southern Railway Company for unloading freight consigned to the ice and coal company with ease, and such freight can be unloaded there in less time than would be required in unloading it elsewhere. It is easier to unload coal from the trestle of the ice and coal company than from the public team-tracks.

"5th. If the ice and coal company had to unload all of its freight on the team-tracks, other than the siding or trestle in question, the said company could not profitably conduct its business.

"6th. The North Carolina Corporation Commission has not, so far as the testimony discloses, attempted to interfere with the business or management of the plaintiff company, except to the extent of requiring it to place the said four cars of the defendant company, nor has the defendant company asked any other interference with said business management. The extent of said interference will more particularly appear by the order made by the North Carolina Corporation Commission."

In the Circuit Court it was decreed, as appears on pages 62-63, as follows:

"It is further considered, ordered, adjudged and decreed that the Greensboro Ice and Coal Company, its officers, agents, attorneys, employees and all persons whomsoever, be and are hereby perpetually enjoined and restrained from instituting or authorizing or directing any others to institute any suit or suits, action or actions, against Southern Railway Company or any of its officers, agents, employees, founded and based upon its disobedience of the orders of the North Carolina Corporation Commission dated October 31, 1903, and December 10, 1903, or for the recovery of any penalties or damages under and by virtue of any provisions of the act of the General Assembly of North Carolina, Public Laws 1899, chapter 164, and any and all amendments thereto, and under any other law and under and by virtue of any orders, rules or regulations of said defendants, Franklin McNeill, Samuel

L. Rogers and Eugene C. Beddingfield, acting as North Carolina Corporation Commission, or any of them combined, or their successors in office, in so far as same relate to or purport to affect four cars of coal," etc.

And further:

"It is further considered, ordered, adjudged and decreed that said defendants, Franklin McNeill, Samuel L. Rogers and Eugene C. Beddingfield, and each and all of them and any of them combined, and their successors in office, as members of said North Carolina Corporation Commission, are hereby perpetually enjoined and restrained from instituting any suit or suits, action or actions, against Southern Railway Company or any of its officers, agents and employees, founded and based upon the disobedience by Southern Railway Company of said orders of said McNeill, Rogers and Beddingfield, dated October 31, 1903, and December 10, 1903, and they and their successors in office are each and all of them and any of them combined hereby perpetually enjoined and restrained from requiring, authorizing, permitting, requesting or inducing the Attorney-General of North Carolina or his successors in office to institute or bring any suit or suits on relation of North Carolina Corporation Commission for the recovery of any damage or penalties from Southern Railway Company by virtue of any provisions of the act of the General Assembly of North Carolina, Public Laws 1899, chapter 164, or any amendments to said act, and each and all of them and any of them combined and their successors in office are hereby perpetually enjoined and restrained from attempting to apply the provisions of any rules, orders or regulations of the North Carolina Corporation Commission relating to the placing of cars for loading and unloading and fixing a time limit for delivery of freight after same have been received by the transportation companies for shipment, or any other rules or regulations of said North Carolina Corporation Commission, to any equipment or any of the operations or transactions of Southern Railway Company while same are engaged in interstate commerce. And said defendants, McNeill, Rogers, and Beddingfield, and their successors in office are hereby perpetually enjoined and restrained from in anywise interfer-

ing with any of the interstate commerce whatsoever of Southern Railway Company or the receiving, delivering, storage or handling thereof."

From this decree the appellants duly appealed to this Court, and now seek to have the decree reversed.

## SPECIFICATIONS OF ERROR.

The decree of the Judge in the Circuit Court, filed April 10, 1905, printed on page 452 of the record, is alleged to be erroneous, as appears from the assignments of error, printed on page 457 of the record. The errors may be summarized as follows:

1st. That it was decreed that the $146 claimed by the Southern Railway Company to be due from the Greensboro Ice and Coal Company, on account of demurrage, did not necessarily enter into the merits of the controversy; and the Circuit Judge erred when he failed to decree that the sole and only cause of the Southern Railway Company's failure to comply with the orders of the North Carolina Corporation Commission was the refusal of the Greensboro Ice and Coal Company to pay $146 which was not due; and the Judge erred when he failed to decree that there was no other rule, regulation or requirement of the Southern Railway Company which the Greensboro Ice and Coal Company failed to comply with, and when he failed to find and decree that if the $146 had been paid the four cars of coal, which were the subject of the orders of the North Carolina Corporation Commission, would have been placed.

2d. The decree is erroneous in that it was decreed that any demurrage was due on the four cars of coal, the subject of the North Carolina Corporation Commission's order; and in that the Judge failed to find that, inasmuch as the four cars were withheld by the Southern Railway Company for the purpose of collecting the $146, which was not due, and enforcing the

payment of $146, that no demurrage could accrue while the said four cars were thus withheld.

3d. The Court erred when it failed to decree and find that there was no interruption or threatened interruption of the use of the private siding of the Greensboro Ice and Coal Company.

4th. There was error in the failure to decree and find that there was an implied contract between the Greensboro Ice and Coal Company and the Southern Railway Company to use the private siding of the Greensboro Ice and Coal Company for placing and unloading cars consigned to the latter, and that this could be done under reasonable rules and regulations without interfering with the business of the Southern Railway Company, and that therefore the latter could not terminate the agreement without the consent of the Greensboro Ice and Coal Company.

5th. There was error in the failure of the Court to find and decree that the proceeding before the North Carolina Corporation Commission, with regard to the placing of the four cars of coal, the subject of its order, were regular, and that the Southern Railway Company had its hearing and day in court before the orders were made by the North Carolina Corporation Commission to place the four cars, the subject of its orders.

6th. The Court erred when it found and decreed that the fifth exception by the defendant to the Master's report should be sustained, and when it decreed that the Greensboro Ice and Coal Company failed to comply with any reasonable requirements of the Southern Railway Company.

7th. The Court erred when it sustained the twelfth exception of the Southern Railway Company to the Master's report and held incompetent the evidence with regard to the thirteen cars of coal, which were not the subject of the North Carolina Corporation Commission's order, but on account of a claim growing out of which, the four cars of coal which were the sub-

ject of the North Carolina Corporation Commission's order, were withheld.

8th. The decree rendered in the Circuit Court is erroneous in that it proceeds upon the idea that the interstate business of the Southern Railway Company was interfered with by the orders of the North Carolina Corporation Commission, and in that it assumes and decrees that the orders of the North Carolina Corporation Commission were "void and repugnant to the Constitution and laws of the United States, and constitute a direct interference with interstate commerce."

9th. That the Court erred in that it decreed that the Public Laws of North Carolina 1899, chapter 164, subsection 26 of section 2, and the orders and rules of the North Carolina Corporation Commission, promulgated in pursuance thereof, are void, and that the rules of the North Carolina Corporation Commission governing railroads, and its placing of cars for loading and unloading freight, and in fixing a time limit for the delivery of freights, where same have been received by the transportation companies for shipment, are void, in so far as said rules and requirements purported to govern and control interstate commerce, and that said rules are not applicable to interstate commerce.

10th. The decree of the Circuit Court appealed from is erroneous in that it restrains and enjoins the Greensboro Ice and Coal Company, Franklin McNeill, Samuel L. Rogers, and Eugene C. Beddingfield, their agents, etc., and the Attorney-General of North Carolina from suing for penalties for violating the rules of the North Carolina Corporation Commission; or bringing any suit or suits under Public Laws of North Carolina 1899, chapter 164, or any amendments to said act, against the Southern Railway Company, for failure to place cars for loading or unloading; and particularly against suing for penalties for failure of the Southern Railway Company to place

four cars of coal, the subject of the North Carolina Corporatio Commission's order, and from attempting to apply the provi ions of any rules, orders or regulations of the North Carolin Corporation Commission relating to the placing of cars, f loading and unloading, and fixing a time limit for delivery freight after the same may be received by the transportatio companies for shipment, or for failure to observe and compl with any other rules or requirements of the North Carolin Corporation Commission with respect to any equipment or an of the operations or transactions of the Southern Railway Com pany, while same are engaged in interstate commerce.

11th. That the Circuit Court erred in issuing any injunc tion in this case.

12th. That the Circuit Court erred in taxing the Greensboro Ice and Coal Company, Franklin McNeill, Samuel L. Roger and Eugene C. Beddingfield with the costs.

The railway company, on January 31, 1906, appealed from the decree and filed the following assignments of error, the case on appeal being No. 594 in this Court.

## ASSIGNMENTS OF ERROR BY THE SOUTHERN RAILWAY COMPANY.

1. That the Court erred in not holding that the orders of the Corporation Commission of North Carolina, dated October 31, 1903, and December 10, 1903, directing Southern Railway Company to place four cars of coal upon the private siding or trestle of the Greensboro Ice and Coal Company at Greensboro, North Carolina, were void on the ground that said orders were made by the North Carolina Corporation Commission, a body purporting to exercise legislative, executive, and judicial functions contrary to the Constitution of North Carolina and contrary to the Constitution of the United States, both of which

constitutions prescribe that legislative, executive, and judicial functions should be forever separate.

2. Because the Court erred in not holding and in not decreeing that the act of the General Assembly of the State of North Carolina entitled "An act to establish the North Carolina Corporation Commission," Public Acts North Carolina 1899, chapter 164, is, with its amendments, unconstitutional and void because said act and its amendments purport to create North Carolina Corporation Commission a "court of record," and also clothe the "court of record" with legislative and executive functions in violation of the Constitution of the State of North Carolina and in violation of the Constitution of the United States.

## ARGUMENT.

The only point presented by these assignments of error is as to the validity of the act of the General Assembly of North Carolina, chapter 164, Laws of 1899, and acts amendatory thereof.

The questions to be decided by this Court on the two appeals are:

1. As to the jurisdiction of the Court because of the amount involved in the controversy.

2. Whether the North Carolina Corporation Commission had jurisdiction to make the orders complained of and the railway company is precluded by the proceedings before the Commission. Due process.

3. Whether the orders of the Corporation Commission in reference to the placing of the four cars of coal were in violation of the commerce clause of the Federal Constitution.

4. (On the appeal of the railway company) Whether the act of the General Assembly of North Carolina constituting

the Corporation Commission was void as being in violation of the Constitution of the State and of the United States.

I.

## IN REFERENCE TO THE AMOUNT INVOLVED.

The proceedings before the North Carolina Corporation Commission, in which the orders complained of were made, were carried by appeal of the railway company, as the record shows, to the Superior Court of Guilford County, North Carolina. Pending the trial of that appeal the railway company filed a petition for the removal of the cause to the Federal Court. The Judge of the Superior Court of Guilford denied the motion to remove, and the railway company appealed to the Supreme Court of the State. This appeal was heard at Spring Term, 1904, of the Supreme Court of North Carolina. That Court says, in reference to the amount involved:

> "It appears from a careful reading of the petition that the statement as to the amount in controversy was based not upon the amount that the object of the action might be to the plaintiff, but to the inconvenience and loss of the defendant because of the interference of the Corporation Commission with the right of the defendant to manage its large interstate commerce. The exact language of the petition on this point is as follows: 'That the said suit or proceeding is of a civil nature, and is a proceeding to assert and enforce the right of the Greensboro Ice and Coal Company to have the North Carolina Corporation Commission order and direct your petitioner to deliver certain interstate shipments to the plaintiff, Greensboro Ice and Coal Company, and the matter actually in controversy involving the right of the defendant to manage its large interstate commerce without any interference on the part of the plaintiffs, largely exceeds the sum or value of $2,000.' That statement as to the matter in controversy is simply a conclusion of law, and an erroneous one, in our opinion, from the facts as they appear in the record and even in the petition. The matter in controversy was not an attempt on the part of

> the complainant to interfere with the general business of the defendant, the 'large interstate commerce' of the defendant, but was only an order affecting the delivery of certain car-loads of coal consigned to the complainant, and, as we have said, there was no valuation by the defendant of that benefit secured to the plaintiff by the order." *Corporation Commission v. Railway Co.*, 135 N. C., pp. 90, 91.

Both the Master and his Honor in the Court below found that the placing or not placing of the four cars of coal on the siding did not involve an expense of $2,000, and we submit that this expense was the only question proper to have been raised in reference to said order. It being necessary that the railway company should show to the Court that the amount in controversy is $2,000, and having shown only the facts found by the Master and approved by the Court, the following authorities are applicable to this case:

> "The language of the rule limits by its own force the required valuation of the matter in dispute in the particular action or suit in which the jurisdiction is invoked, and it plainly excludes, by the necessary implication, any estimate of the value as to any matter not the subject of that litigation. It was clearly a violation of that rule to add to the value of the matter determining any estimate in money by reason of the probative force by reason of the judgment it had in some subsequent proceeding."

*Elgin v. Marshall*, 106 U. S., 578.
*Holt v. Indiana Mfg. Co.*, 176 U. S., 68.
*U. S. v. Wanamaker*, 147 U. S., 149.
*Washington, etc., Rd. Co. v. District of Columbia*, 146 U. S., 227.
*New England Mort. Security Co. v. Gay*, 145 U. S., 123.
*Baltimore v. Postal Tel. Co.*, 62 Fed. Rep., 500, 502.

## II.

## AS TO THE JURISDICTION OF THE NORTH CAROLINA CORPORATION COMMISSION TO MAKE THE ORDERS COMPLAINED OF BY THE RAILWAY COMPANY, AND WHETHER THE RAILWAY COMPANY IS PRECLUDED BY THE PROCEEDINGS BEFORE THE COMMISSION: DUE PROCESS.

The North Carolina Corporation Commission was made a court of record under Article IV, section 12, of the State Constitution, which provides:

> "The General Assembly shall have no power to deprive the Judicial Department of any power or jurisdiction which rightfully pertains to it as a coördinate department of the government; but the General Assembly shall allot and distribute that portion of this power and jurisdiction, which does not pertain to the Supreme Court, among the other courts prescribed in this Constitution or which may be established by law, in such manner as it may deem best; provide, also, a proper system of appeals; and regulate by law, when necessary, the methods of proceeding in the exercise of their powers, of all the courts below the Supreme Court, so far as the same may be done without conflict with other provisions of this Constitution."

Chapter 164, Public Laws of North Carolina of 1899, entitled "An act to establish a North Carolina Corporation Commission," provides in section 1:

> "That there shall be elected by this General Assembly three Commissioners, who shall have general supervision of railroads, steamboat navigation and canal companies, express and telegraph and telephone companies, building and loan associations, banks and sleeping-car companies. That the said Commissioners elected by this General Assembly, and their successors in office, shall be and they are hereby created and constituted a court of record, and shall be known as the North Carolina Corporation Commission, and as such shall have all the powers and jurisdiction of a court of general jurisdiction, as to all subjects embraced in this act, and shall have a common seal," etc.

Section 2, in enumerating the powers of the Commission, nd consisting of twenty-four subsections, provides, in subsec-ion 15:

> "(15) To require the construction of side-tracks by any railroad company to industries already established or to be established: *Provided*, it is shown that the proportion of such revenues accruing to such side-track is sufficient within five years to pay the expenses of its construction. This shall not be construed to give the Commissioners authority to require railroad companies to construct side-tracks more than five hundred feet."

By chapter 342, Public Laws 1903, an amendment was made by adding a subsection as follows:

> "(25) To make rules, regulations and rates governing demurrage and storage charges by railroad companies and other transportation companies."

That the North Carolina Corporation Commission is authorized under subsection 15 of section 2, chapter 164, Laws 1899, to require a railway company to construct side-tracks leading to industrial establishments, was decided by the Supreme Court of North Carolina at August Term, 1905, in the case of *State ex rel. N. C. Corporation Commission on Petition of The Round Pine Lumber Company v. Seaboard Air Line Railway Co.*, which will be reported in Volume 140 of the North Carolina Reports. In this case the Court said:

> "The Corporation Commission Act, Laws 1899, chapter 164, section 2, enumerates in twenty-six subheads the powers conferred upon the Corporation Commission. Among these, subsection 15 authorizes the Commission, 'To require the construction of side-tracks by any railroad company to industries already established or to be established: *Provided*, it is shown that the proportion of such revenue accruing to such side-track is sufficient within five years to pay the expenses of its construction,' and further restricting the power by forbidding the Commission to re-

quire the construction of any side-track 'more than 500 feet.'

"The power of the General Assembly to establish a commission to supervise and regulate the rates and operations of quasi-public corporations exercising public franchises has been too often decided in the State and Federal Supreme Courts to be again discussed. The matter has been discussed, with the citation of authorities: *R. R. Connection Case*, 137 N. C., 14, *et seq.*: *Corporation Commission v. Railroad* (Rate Case), 127 N. C., 283; *Express Co. v. Railroad*, 111 N. C., 463, and in many others, among them, *Corporation Commission v. Railroad* (Track Scales Case), at this term."

While it appears from the report of the Master (pp. 73 to 75) that in the inception of the proceedings in which the orders complained of were made, the Corporation Commission did not require compliance with its formal rules of practice, it proceeded, after notice to the parties interested, and what is considered as a waiver of formal compliance with the practice, and filing of the complaint and answer, the party submitted to the jurisdiction and the railway company had its day in court by filing exceptions, introducing testimony, and trying the case upon evidence introduced on both sides, and argument of counsel, and appeal to the Superior Court of Guilford County, and motion to remove to Federal Court, etc. (Record, 255 to 430).

Being a court of record, its record *imports verity*, and having jurisdiction of the parties and the subject-matter of the proceedings before it, the Southern Railway Company was bound by its judgment.

The Supreme Court of North Carolina uses this language in a case decided in 1897:

"The only object of a summons is to bring the defendant into court by giving him legal notice, and if he voluntarily appears, without limiting his appearance, he is held to waive a summons, and is as com-

pletely in court as if it had been served. The Court, or any other tribunal having jurisdiction of the subject-matter, has thereafter complete jurisdiction of the person."

*Caldwell v. Wilson*, 121 N. C., 423, at p. 453, citing:
*Jones v. Penland*, 19 N. C., 358.
*Hyatt v. Tomlin*, 24 N. C., 149.
*Duffey v. Averitt*, 27 N. C., 455.
*Middleton v. Duffey*, 73 N. C., 72.
*Wheeler v. Cobb*, 75 N. C., 21.
*Etheridge v. Woodley*, 83 N. C., 11.
*Penniman v. Daniel*, 95 N. C., 341.
*Roberts v. Allman*, 106 N. C., 391.

In *State v. Jones*, 88 N. C., 683, 685, the Court says:

"The object of process is to give notice and an opportunity to make defense to an action. The *scire facias* furnished this notice, and the sureties submitted to the jurisdiction and resisted the demand for judgment. A defendant may appear without process, and his appearance dispenses with process, since its purpose is to bring him into court, and he is in court when he answers and defends the action."

See Ency. of Pl. and Pr., Vol. II, p. 639.

The "due process" clause of the Fourteenth Amendment to e Constitution of the United States does not control forms of ocedure nor regulate practice therein. Its requirements are mplied with if the party complaining has had sufficient notice d opportunity to defend.

*Louisville and N. R. R. v. Schmidt*, 177 U. S., 230.
*Long Island Water Supply Co. v. Brooklyn*, 166 U. S., 685.
*Hooker v. Los Angeles*, 188 U. S., 314.
*Iowa Central Ry. Co. v. Iowa*, 160 U. S., 389.

This process is regulated by the law of the State, and the nited States Courts can only intervene when it is in conflict

with the supreme law of the land, that is to say, with the courts and laws of the United States made in pursuance thereof.

*Walker v. Sauvinet*, 92 U. S., 90.
*Leeper v. Texas*, 139 U. S., 462, 467.

III.

## THE PRINCIPAL QUESTION IN THE CASE IS, WHETHER THE ORDER OF THE CORPORATION COMMISSION, MADE IN PURSUANCE OF THE POWERS CONFERRED UPON IT BY THE ACT ESTABLISHING IT, AND THE AMENDMENTS THERETO, IS IN VIOLATION OF THE "COMMERCE CLAUSE" OF THE FEDERAL CONSTITUTION.

Neither the act of Congress of February 4, 1887, establishing the Interstate Commerce Commission, nor the amendments thereto, adopted in 1889, 1893 and 1903, have any provision with reference to side-tracks at stations of railway companies, the subject-matter of the orders complained of in this suit.

We submit that where State legislation is not intended to impede or interfere with interstate commerce, but rather to aid in transportation or safe and prompt delivery of freight to consignees after it has reached its place of destination, such legislation is not in conflict with the Constitution of the United States.

The members of the North Carolina Corporation Commission have sought to perform the duties imposed upon them by the laws of North Carolina, within the limitations fixed by the Constitution of the United States, including the *"commerce clause,"* and the decisions of this Court construing the Constitution; and they now contend that they have not, by the orders of October 31, 1903, and December 10, 1903, printed on pages 301 and 309, respectively, transgressed these limitations or exercised powers inconsistent with the laws of the United States.

eginning with the case of *Gibbons v. Ogden*, 9 Wheat., 1, at
rnary Term, 1824, and ending with the last decision of this
rt, construing the commerce clause, there seems to be no
ision supporting the contention that the North Carolina Cor-
ation Commission could not lawfully make such orders as
se it has made in this case. The purpose for which that
use of the Constitution of the United States was adopted, as
clared by this Court, was to leave commerce with foreign
tions, among the States, and with Indian tribes, untram-
eled by State legislation, and secure from burdens placed on
by State interference, so that those engaged in it would not
harassed and annoyed by conflicting laws made to favor one
tate, and which discriminates against others.

The position of the railway company, a common carrier of
oods, that it may arbitrarily withhold from the consignee the
oods carried by it after they have arrived at the point of desti-
ation, and that however unreasonable and unjust this with-
olding may be, that the State court or authorities have no
ower to make any order with respect to the delivery thereof,
though the orders may be made in *aid of commerce*, is not sup-
ported by any decision of this Court, or by reason.

If this contention were correct, then the interstate commerce clause of the Constitution, adopted for the purpose of preventing the States from obstructing commerce, would have the effect of allowing common carriers of interstate freight to place an intolerable burden upon commerce. The common carrier, chartered to benefit commerce, could arbitrarily destroy such of it as it wished. In the nature of things, the State authorities alone can make and enforce regulations to insure the prompt delivery of shipments of freight, such as that out of which this litigation grew. The contention of the Southern Railway Company, that any order of the North Carolina Corporation Commission, with respect to freight hauled by it from without the

State to a consignee at Greensboro, N. C., is void, and in conflict with the Constitution of the United States, if sound, means that no State court or authority can entertain an action, or make a valid order with respect to any such freight. This position of the appellee means that an article of freight, shipped from Washington, D. C., to Greensboro, N. C., may be arbitrarily and indefinitely withheld from the consignee by the Southern Railway Company. If an action of "claim and delivery" should be brought by the consignee in the State court for such article, and it should appear that the Southern Railway Company, the only common carrier between the point of shipment and the point of destination, was wrongfully withholding the freight for some cause alleged by it to be sufficient, but which did not in fact justify it, the State court could not entertain the action.

The way marked out by this Court in its opinion delivered by Chief Justice Marshall in *Gibbons v. Ogden*, *supra*, has been consistently followed by it since.

In that case the Court laid down the following rules:

First. The construction of the commerce clause of the Constitution depends upon the language of the instrument, and the object and purpose, aimed at by the framers of the Constitution, as gathered from that instrument.

Second. Commerce includes more than trading, traffic, bargain and sale; it embraces intercourse.

Third. Commerce *among* the States does not stop at the boundary of a State, but the interstate commerce clause *protects* the article of trade to its destination; but it does not embrace commerce which does not affect other States.

Fourth. Where Congress has acted and undertaken the regulation of commerce in any respect, the State cannot act so as to interfere with the regulations of Congress; but, nevertheless, the State and the United States may make laws, rules and regu-

lations applicable to the same subject-matter, where there is no conflict between them.

Fifth. The several States have, respectively, the acknowledged power to regulate their own police and domestic affairs, but when Congress has acted upon any matter, regulating interstate commerce, the power of the State to act in this particular, in conflict with the action taken by Congress, is at an end.

Sixth. That inasmuch as steamboats had been licensed under an act of Congress, and were employed in navigating the waters in the State of New York, that the effort of that State to confer upon certain persons the exclusive right to navigate these waters was a nullity.

In the case of *Brown v. State of Maryland*, 12 Wheat., 419, this Court declared unconstitutional an act of the State of Maryland requiring all importers of foreign goods by the bale or package, etc., and other persons selling the same by wholesale, bale or package, etc., to take out a license, for which they were required to pay $50. The Court, through Chief Justice Marshall, applied one of the principles enunciated in *Gibbons v. Ogden, supra:* That the power to regulate commerce with foreign nations, and among the several States, is co-extensive with the subject on which it acts, and cannot be stopped at the boundary of the State, but must enter its interior. It is there said:

> "If this power reaches the interior of a State, and may be there exercised, it must be capable of authorizing the sale of those articles which it introduces. Commerce is intercourse; one of its most ordinary ingredients is traffic."

And again:

> "Congress has a right, not only to authorize importation, but to authorize the importer to sell."

And again:

> "The power claimed by the State is, in its nature in conflict with that given to Congress; and the greater or less extent in which it may be exercised does not enter into the inquiry concerning its existence."

The difference between these cases and the case at bar is apparent. In the former there was a *restriction* upon commerce; in this case the effort is to *prevent the common carrier* from placing an unreasonable burden upon it.

The case of *Wilson v. Black Bird Creek Marsh Company*, 2 Peters, 245, was one in which the defendant had constructed a dam across a navigable stream, under authority of an act of the Legislature of Delaware, and the plaintiff complained that the act was unconstitutional, because power was given to Congress to regulate commerce with foreign nations and among the States. Chief Justice Marshall, delivering the opinion for the Court, recognized the right of the State to act in this matter, as it had done, for the reason that the power given to Congress by the Constitution had not been exercised, and the Court in that case, referring to the Delaware statute, says:

> "The counsel for the plaintiffs in error insist that it comes in conflict with the power of the United States 'to regulate commerce with foreign nations and among the several States.'
>
> "If Congress had passed any act which bore upon the case—any act in execution of the power to regulate commerce, the object of which was to control State legislation over those small navigable creeks into which the tide flows, and which abound throughout the lower country of the Middle and Southern States—we should feel not much difficulty in saying that a State law coming in conflict with such act would be void. But Congress has passed no such act. The repugnancy of the law of Delaware to the Constitution is placed entirely on its repugnancy to the power to regulate commerce with foreign nations and among the several States—a power which has not been so exercised as to affect the question."

The appellant does not contend, however, that the Court has ever held that all attempts by the several States to regulate commerce, or all acts that affect interstate commerce, are valid where there is an absence of an act of Congress bearing upon the case. There are some things which are necessarily repugnant to the power given to Congress by the Constitution of the United States, "to regulate commerce with foreign nations and among the several States," even in cases where Congress has not acted. There are other matters and things which the State may do with reference to interstate commerce that are valid in the absence of an act of Congress bearing upon these particular matters. The conclusion of Chief Justice Marshall in the opinion last cited indicates that he had in mind this distinction:

> "We do not think that the act empowering the Black Bird Creek Marsh Company to place a dam across the creek can, under all the circumstances of the case, be considered as repugnant to the power to regulate commerce in its dormant state, or as being in conflict with any law passed on the subject."

This distinction more clearly appears in some of the later cases.

In the case of the *Mayor, etc., of New York v. Miln*, reported in 11 Peters, 102, the plaintiffs had instituted an action of debt in the courts of New York, alleged to have been incurred by the defendant, under the provisions of an act of the Legislature of New York, which provides that any master of a ship or vessel, arriving in the port of New York, from any country out of the United States, or from any other State of the United States, shall within twenty-four hours after his arrival make a report in writing to the mayor, or, in his absence, to the recorder, giving the names, place of birth, and last legal settlement, age, and occupation, of every person brought, as a passenger, in the ship or vessel, or on board of her, on the last voyage, and requiring

certain other things to be done by the master of such vesse entering New York, and imposing a penalty for failure to co ply with the requirements of this statute.

The defendant being a non-resident of New York, remov the case to the Circuit Court of the United States. The d fendant contended that the act of the Legislature of the Sta of New York, mentioned in the plaintiff's declaration, assume to regulate trade and commerce between the port of New Yo and foreign ports, and was unconstitutional and void. Upo this question, the opinion of the Judges being opposed, the sam was certified to the Supreme Court at the request of the plain tiffs. The act was there upheld.

Mr. Justice Barbour, delivering the opinion of the Court, sai that the Supreme Court had said in the case of *Gibbons v Ogden, supra:*

> "Since, however, in regulating their own purely internal affairs, whether of trading or of police, the States may sometimes enact laws, the validity of which depends on their interfering with and being contrary to an act of Congress passed in pursuance of the Constitution, they would inquire whether there was such collision in that case, and they came to the conclusion that there was.
>
> "From this it appears that whilst a State is acting within the legitimate scope of its power as to the end to be attained, it may use whatsoever means, being appropriate to the end, it may think fit; although they may be the same, or so nearly the same, as scarcely to be distinguishable from those adopted by Congress acting under a different power; subject only, say the Court, to this limitation, that in the event of collision, the law of the State must yield to the law of Congress. The Court must be understood, of course, as meaning that the law of Congress is passed upon a subject within the sphere of its power.
>
> "Even then, if the section of the act in question could be considered as partaking of the nature of a commercial regulation, the principle here laid down would save it from condemnation, if no such collision exists."

Again the Court said in that case:

> "The case of *Wilson v. The Black Bird Creek Marsh Company*, 2 Peters, 251, is a strong case to show that a power admitted to fall within the power to regulate commerce may be exercised by the States until Congress assumes the exercise. The State law under consideration in that case authorized the erection of a dam across a creek, up which the tide flows for some distance, and thereby abridges the right of navigation by those who had been accustomed to use it."

Again:

> "Whether the law of New York, so far as it applies to the case now before the Court, be considered as a mere police regulation, and the exercise of a power, belonging exclusively to the States; or whether it be considered as legislating on a subject falling within the power to regulate commerce, but which still remains dormant, Congress not having exercised any power conflicting with the law in this respect, no constitutional objection can, in my judgment, arise against it. I have chosen to consider this question under this double aspect, because I do not find as yet laid down by this Court any certain and defined limits to the exercise of this power to regulate commerce or what shall be considered commerce with foreign nations, and what the regulations of domestic trade and police. And when it is denied that a State law, in requiring a list of the passengers arriving in the port of New York from a foreign country, to be reported to the police authority of the city, is unconstitutional and void, because embraced within that power, I am at a loss to say where its limits are to be found. It becomes, therefore, a very important principle to establish that the States retain the exercise of powers which, although they may in some measure partake of the character of commercial regulations, until Congress asserts the exercise of the power under the grant of the power to regulate commerce."

The case of the *County of Mobile, State of Alabama, v. Kimball, et als.*, 102 U. S., 691, was one that grew out of the following facts: An act of the Legislature of Alabama created a board of commissioners for the improvement of the river, har-

bor and bay of Mobile, and required the President and Commissioners of Revenue of Mobile County to issue bonds to the amount of a million dollars and deliver them when called for by the board to meet the expense of the work directed. The board was authorized to apply the bonds, or their proceeds, to the cleaning out, deepening and widening of the river, harbor and bay of Mobile, or any part thereof, or to the construction of an artificial harbor in addition to such improvement.

In a little more than five years the board entered into a contract with the defendants, Kimball and Slaughter, to dredge and cut a channel through a designated bar in the bay. The work was done by the defendants and some of the bonds were delivered to them, but there were six bonds, which a certificate from the board showed the defendants were entitled to, which they did not receive, and suit was brought to enforce their delivery. It was objected by the County of Mobile that the law in question trenched upon the commercial power of Congress. It was held by the Supreme Court of the United States that there was power in the State to pass the act in question. The reasoning of the Court is very much in point in the case at bar, and the following somewhat extensive quotations from that opinion sustain the position of the appellants here. It is there said:

> "The subjects, indeed, upon which Congress can act under this power are of infinite variety, requiring for their successful management different plans or modes of treatment. Some of them are national in their character, and admit and require uniformity of regulation, affecting alike all the States; others are local or mere aids to commerce, and can only be properly regulated by provisions adapted to their especial circumstances and localities."

And again:

"Of the class of subjects local in their nature, or intended as mere aids to commerce, which are best provided for by special regulations, may be mentioned harbor pilotage, buoys and beacons to guide mariners to the proper channel in which to direct their vessels.

"The rules to govern harbor pilotage must depend in a great degree upon the peculiarities of the ports where they are to be enforced. It has been found by actual experience that skill and efficiency on the part of local pilots is best secured by leaving this subject principally to the control of the States. Their authority to act upon the matter and regulate the whole subject, in the absence of legislation by Congress, has been recognized by this Court in repeated instances."

Again the Court says:

"That power which every State possesses, sometimes termed its police power, by which it legislates for the protection of the lives, health and property of its people, would justify measures of this kind.

"The uniformity of commercial regulations, which the grant to Congress was designed to secure against conflicting State provisions, was necessarily intended only for cases *where such uniformity is practicable. Where, from its nature of the sphere of its operation,* the subject is local and limited, special regulations *adapted to the immediate locality could only have been contemplated.* State action upon such subjects can constitute no interference with the commercial power of Congress, for when that acts the State authority is superseded. Inaction of Congress upon these subjects of a local nature or operation, unlike its inaction upon matters affecting all the States and requiring uniformity of regulation, is not to be taken as a declaration that nothing shall be done with respect to them, but is rather to be deemed a declaration that for the time being, and until it sees fit to act, they may be regulated by State authority."

Again it is said:

"Legislation of the States for the purposes within the limits mentioned do not infringe upon the commercial power of Congress."

Again it is said, after commenting upon the cases of *Gibbons v. Ogden*, *Wilson v. Black Bird Creek Marsh Company*, and the *License Cases*, before the Court in 1847:

> "But in 1851, in the case of *Cooley v. Port Wardens*, to which we have already referred, the attention of the Court appears to have been, for the first time, drawn to the carrying and different regulations required by the different subjects upon which Congress may legislate under the commercial power, and from this consideration the conclusion was reached, that, as some of these subjects are national in their nature, admitting of one uniform plan or system of regulation, whilst others, being local in their nature of operation, can best be regulated by the States, the exclusiveness of the power in any case is to be determined more by the nature of the subject upon which it is to operate than by the terms of the grant, which, though general, are not accompanied by any express prohibition to the exercise of the power by the States. The decision was confined to the validity of regulations by the States, of harbor pilotage; but the reasoning of the Court suggests as satisfactory a solution as perhaps could be obtained of the question which had so long divided the Judges. The views expressed in the opinion delivered are followed in *Gilman v. Philadelphia*, 3 Wall., 713 (70 U. S., 96), and are mentioned with approval in *Crandall v. Nevada*, 6 Wall., 35 (73 U. S., 745). In the first of these cases the Court, after stating that some subjects of commerce call for uniform rules and national legislation, and that others can 'be best regulated by rules and provisions suggested by the varying circumstances of different localities, and limited in their operation to such localities respectively,' says: 'Whether the power in any given case is vested exclusively in the general government depends upon the nature of the subject to be regulated.' This doctrine was subsequently recognized in the case of *Welton v. Missouri*, 91 U. S., 275; *Henderson v. Mayor of N. Y.*, 92 U. S., 259, and in numerous other cases; and it may be considered as expressing the final judgment of the Court.
>
> "Perhaps some of the divergencies of views upon this question among former judges may have arisen from not always bearing in mind the distinction be-

ween commerce, as strictly defined, and its local aids
r instruments, or measures taken for its improve-
ent."

lowing the ruling in this and other decisions of the Su-
Court of the United States, the Supreme Court of North
na has decided that a State statute compelling the ship-
of interstate freight within a certain time after receiving
der a penalty for default, is not an unconstitutional act,
loes not *trammel* or *obstruct* such commerce.

*Bagg v. Wilmington C. & A. R. Co.*, 109 N. C., 281, 26
State Rep., 571; 14 L. R. A., 597. It is there said:

"This case illustrates the distinction drawn by Jus-
ice Strong in *Hannibal and St. J. R. Co. v. Husen*,
5 U. S., 470, between a State statute that affects or
nfluences incidentally, even to the slightest extent,
he transportation of commodities from one State to
nother, and one that is palpably intended to embar-
ass such commerce, and trammel it by restrictions,
specially where, in addition, there is a plain discrim-
nation in favor of the local trade or production.
Neither the clause of the Constitution which we have
onsidered, nor any other, has been construed to inter-
fere with 'the power of the State, sometimes termed its
'police power,' to prescribe regulations to promote the
ealth, peace, morals, education and good order of the
people, and to legislate so as to increase the indus-
ries of the State, develop its resources and add to its
wealth and prosperity.' *Barbier v. Connolly*, 113
U. S., 27, 28 L. Ed., 923; *Mugler v. Kansas*, 123
U. S., 623, 31 L. Ed., 205.

"The palpable purpose of the Legislature in enact-
ng our statute was to *stimulate trade* and develop the
resources of its people. It throws the *ægis* of State
protection alike over freight consigned under the care
of the State and that of which the general government
has the right of supervision. The requirements of a
State law that locomotive engineers be examined as to
the condition of their eyes, to determine whether they
were color-blind, and as to fitness generally, and re-
quiring them to have a license, have been declared
valid under the general authority to protect life,

> health and property; yet such statutes interfere with and affect, but *do not obstruct*, commerce between the States."

Again it is said in that case:

> "Where, therefore, the State Legislature, with discrimination, passes a law which operates uniformly in *aiding domestic* and *interstate trade* alike, and Congress has not acted or has not the authority to afford so complete a remedy for the evil as the State Legislature, there can be no question about the validity of such legislation or the duty of State courts to enforce it."

The case of *Liesy v. Hardin*, 135 U. S., 100, was a case in which the Supreme Court of the United States held that a city of one State has the right to import beer into another State for sale, and sell it there in its original packages, and that a State law which forbids the receipt of an imported commodity, or its sale after it has ceased to be an article of trade between one State and another, is a regulation of commerce between the States, and is void. It is said by Mr. Chief Justice Fuller, in delivering the opinion of the Court:

> "The doctrine now firmly established is stated by Mr. Justice Field in *Bowman v. Chicago & N. W. R. Co.*, 125 U. S., 507, that 'where the subject upon which Congress can act under its commercial power is local in its nature or sphere of operation' the State can act until Congress interferes or supersedes its authority."

Again it is there said:

> "The conclusion follows, that, as the grant of the power to regulate commerce among the States, so far as one system is required, is exclusive, the States cannot exercise that power without the consent of Congress, and in the absence of legislation, it is left for the courts to determine when State action does or does not amount to such exercise, or, in other words, what is or is not a regulation of such commerce. When that is determined, controversy is at an end."

Again it is said in this case:

> "On the other hand, we have decided in *Mobile County v. Kimball*, 102 U. S., 691, that a State statute providing for the improvement of the river, bay and harbor of Mobile, since what was authorized to be done was only as a *mere aid to commerce*, was, in the absence of action by Congress, not in conflict with the Constitution."

The case of *Nashville, C. & St. L. R. Co. v. Alabama*, 128 U. S., 96, which decides that the State statute requiring locomotive engineers to be examined and obtain license was not in its nature a regulation of commerce, is cited with approval.

In the case of *Western Union Telegraph Company v. James*, 162 U. S., 650, it was decided that a State statute imposing a penalty for lack of due diligence in the delivery of a telegram was not an unconstitutional interference with interstate commerce, as applied to interstate messages, in the absence of legislation by Congress on the subject. The Supreme Court in discussing the statute in that case said:

> "The validity of the statute is based upon the general power of the State to enact such laws in relation to person and property within its powers as may protect the public health, the public morals, and the general prosperity and safety of its inhabitants. This power is somewhat generally described as the police power of a State, a detailed definition of which has been said to be difficult if not impossible to give. However extensive the power may be, it cannot encroach upon the powers of the Federal Government in regard to rights granted and secured by the Federal Constitution. It has been settled by the adjudication of this Court that telegraph lines when extending through different States are instruments of commerce which are protected by the above clause in the Federal Constitution, and that the messages passing over such lines from one State to another constitute a portion of commerce itself. Such messages come within the protecting clause of the Constitution just quoted, and if

the statute in question can be construed as regulating commerce between the States, the statute would be invalid on that account."

Again it is said in that case:

"It is urged that although there is no statute of Congress expressly providing a penalty for the failure to deliver telegraphic messages impartially and with due diligence, yet still the very fact of the absence of such legislation is equivalent to a declaration by Congress that no penalty should be affixed, and the company should be left free to pursue its business untrammeled by any State legislation upon the subject. In regard to those matters relating to commerce which are not of the nature to be affected by locality, but which necessarily ought to be the same over the whole country, it has been frequently held that the silence of Congress upon such a subject over which it had unquestioned jurisdiction, was equivalent to a declaration, that in those respects commerce should be free and unregulated by any statutory enactment. The matters upon which the silence of Congress is equivalent to affirmative legislation are national in their character, and such as to fairly require uniformity of regulation upon the subject-matter involved, affecting all the States alike."

In *Covington & C. Bridge Co. v. Kentucky*, 154 U. S., 204, Mr. Justice Brown, in delivering the opinion of the Court, said:

"'The adjudication of this Court with respect to the power of the State over the general subject of commerce is divisible into three classes: First, those in which the power of the State is exclusive; second, those in which the State may act in the absence of legislation by Congress; third, those in which the action of Congress is exclusive and the State cannot interfere at all.' On page 212 of the report are cited many cases as coming within the second class, etc."

Again it is said on page 656:

"It has been held that it is not every enactment which may incidentally affect commerce and the persons engaged in it that necessarily constitutes a regulation of commerce within the meaning of the Constitu-

tion. *Sherlock v. Alling*, 93 U. S., 99; *Philadelphia & R. R. Co. v. Pennsylvania* (State Tax on Railway Gross Receipts), 82 U. S., 284; *Mobile County v. Kimball*, 102 U. S., 691; *Smith v. Alabama*, 124 U. S., 465."

Again it is said in that case:

> *"Legislation which is a mere aid to commerce may be enacted by a State, although at the same time it may incidentally affect commerce itself."*

After quoting from the case of *Hall v. DeCuir*, 95 U. S., 485, and stating that the statute there under consideration was void, on account of its interfering with interstate commerce, the Court says, in *Western Union Telegraph Company v. James*, on page 658:

> "It is seen from this reasoning that the foundation for holding the act void was that it necessarily affected the conduct of the carrier and regulated him in the performance of his duties outside and beyond the limits of the State enacting the law. A provision for the delivery of telegraphic messages arriving at a station within the State is not of the same nature as that statute, and would have no such effect upon the conduct of the telegraph company with regard to the performance of its duties outside of the State."

The Court proceeds as follows:

> "With this brief reference to some of the cases that have been decided in this Court respecting the commerce clause in the Constitution, the question arises: Which of the classes spoken of in *Covington & C. Bridge Co. v. Kentucky*, 154 U. S., 204, includes the statute under review? Is it a mere police regulation, that but incidentally affects commerce, such as *Smith v. Alabama*, 124 U. S., 465, and which, at any rate, would be valid until Congress should legislate upon the subject; or is it of such a nature, so extensive and national in character, that it could only be dealt with by Congress? We do not think it is the latter. It is not at all similar in its nature to the case above cited of *Hall v. DeCuir*, 95 U. S., 485. In one sense it affects the transmission of interstate messages, be-

> cause such transmission is not completed until the message is delivered to the person to whom it is addressed, or reasonable diligence employed to deliver it. *But the statute can be fully carried out and obeyed without in any manner affecting the conduct of the company with regard to the performance of its duties in other States.*"

Again it is said in that case:

> "The statute in question is of a nature that is in aid of the performance of a duty of the company that would exist in the absence of any statute, and it is in nowise obstructive of its duty as a telegraph company. It imposes a penalty for the purpose of enforcing this general duty of the company."

Again it is said:

> "Can it be said that the imposition of a penalty for the violation of a duty which the company owed by the general law of the land is a regulation of or an obstruction to interstate commerce within the meaning of that clause of the Federal Constitution under discussion? We think not. No tax is laid upon any interstate message, nor is there any regulation of a nature calculated to at all *embarrass, obstruct, or impede the company in the full and fair performance of its duty as an interstate sender of messages.*"

Again it is there said:

> "While it is vitally important that commerce between States should be unembarrassed by vexatious State regulations regarding it, yet, on the other hand, there are many occasions where the police power of the State can be properly exercised to insure a faithful and prompt performance of duty within the limits of the State upon the part of those who are engaged in interstate commerce."

UNDER THE POLICE POWER THE STATE CAN LEGISLATE FOR THE PUBLIC CONVENIENCE, AS WELL AS FOR THE PUBLIC HEALTH, MORALS AND SAFETY.

In the case of *Lake Shore & M. S. R. Co. v. Ohio*, 173 U. S., 285, a State statute of Ohio was held valid which provided for a penalty on railroad companies for failure to stop at cities and villages of three thousand or more inhabitants, at least three trains each day, except Sundays, if so many trains were run. In the opinion of the Court, delivered by Mr. Justice Harlan, it is said:

> "The plaintiff in error contends that, as the power to regulate interstate commerce is vested in Congress, the statute of Ohio in its application to trains engaged in such commerce is directly repugnant to the Constitution of the United States."

Further on in the opinion this language is used:

> "While cases to which counsel refer involved the validity of State laws having reference directly to the public health, the public morals, or the public safety, in no one of them was there any occasion to determine whether the police powers of the States extended to regulations incidentally affecting interstate commerce, but which were designed only to promote the public convenience or the general welfare."

Again it is said, quoting from *Gilman v. Philadelphia*, 3 Wall., 713, 729:

> "*It is for the municipal power to weigh the considerations which belong to the subject, and to decide which shall be preferred and how far either shall be made subservient to the other.* The States have always exercised this power, and from the nature and objects of the two systems of government they must always continue to exercise it, subject, however, in all cases, to the paramount authority of Congress whenever the power of the States shall be exerted within the sphere of the commercial power which belongs to the Nation."

Again, in speaking of the police power:

> "The power here referred to is, to use the words of Chief Justice Shaw, the power 'to make, ordain, and establish all manner of wholesome and reasonable

laws, statutes and ordinances, either with penalties or without, not repugnant to the Constitution, as they shall judge to be for the good and welfare of the Commonwealth and of the subjects of the same.' *Com. v. Alger*, 7 Cush., 53, 85. Mr. Cooley well said: 'It cannot be doubted that there is ample power in the legislative department of the State to adopt all necessary legislation for the purpose of enforcing the obligations of railway companies as carriers of persons and goods to accommodate the public safety and expedition.' Cooley's Const. Lim., 6th Ed., p. 715. It may be that such legislation is not within the 'police power' of a State, as those words have been sometimes, although inaccurately, used. But in our opinion the power, whether called police, governmental, or legislative, exists in each State, by appropriate enactments not forbidden by its own Constitution or the Constitution of the United States, to regulate the relative rights and duties of all persons and corporations within its jurisdiction, and therefore to provide for the public convenience and the public good. This power in the States is entirely distinct from any power granted to the general government, although when exercised it may sometimes reach subjects over which national legislation can be constitutionally extended."

As is said by the Court in that case:

"*Cooley v. Philadelphia Port Warden*, 12 How., 209; *Sherlock v. Alling*, 93 U. S., 99; *Morgan's L. & T. R. & S. S. Co. v. Louisiana Bd. of Health*, 118 U. S., 455; *Smith v. Alabama*, 124 U. S., 565; *Nashville, C. & St. L. Railway Co. v. Alabama*, 128 U. S., 96; *Hennington v. Georgia*, 163 U. S., 299; *Missouri, Kansas & Texas Ry. Co. v. Haber*, 169 U. S., 613, and *New York, N. H. & H. Railroad Co. v. New York*, 165 U. S., 628, were all cases involving State regulations more or less affecting interstate and foreign commerce, but which were sustained upon the ground *that they were not directed against nor were direct burdens upon interstate or foreign commerce.*"

Again:

"While the laws of the States must yield to acts of Congress passed in execution of the powers conferred upon it by the Constitution, the mere grant to Con-

gress of the power to regulate commerce with foreign nations and among the States, did not, of itself and without legislation by Congress, impair the authority of the States to establish such reasonable regulations as were appropriate for the protection of the health, the lives, and the safety of their people."

Again:

"Nor is it within the necessary meaning of the Constitution a regulation of commerce, although it controls, in some degree, the conduct of those engaged in such commerce. So far as it may affect interstate commerce, it is to be regarded as legislation in aid of commerce and enacted under the power remaining with the State to regulate the relative rights and duties of all persons and corporations within its limits."

Again it is there said:

"Consistently with these doctrines it cannot be adjudged that the Ohio statute is unconstitutional. The power of the State by appropriate legislation to provide for the *public convenience* stands upon the same ground precisely as its power by appropriate legislation to protect the public health, the public morals, or the public safety."

In the case of *Wisconsin, M. & R. R. Co. v. Jacobson*, 179 U. S., 294, it is held that the statute of Minnesota, requiring railroad companies to make track connections and provide facilities for the interchange of cars and traffic at railroad intersections, is not an unconstitutional interference with the power of Congress to regulate commerce.

It is there said:

"To provide at the place of intersection of these two railroads, at Hanley Falls, ample facilities by track connections for transferring any and all cars used in the regular business of the respective lines of road from the lines or tracks of one of said companies to those of the other, and to provide at such place of intersection equal and reasonable facilities for the interchange of cars and traffic between their respective lines, and for receiving, forwarding, and delivering of

> property and cars to and from their respective lines, as provided for by this judgment, would plainly afford facilities to interstate commerce, if there were any, and would in nowise regulate such commerce within the meaning of the Constitution. That is all that has been done by the judgment under review. A State may furnish such facilities or direct them to be furnished by persons or corporations within its limits without violating the Federal Constitution."

And again:

> "Although to carry out the judgment may require the exercise by the plaintiff in error of the power of eminent domain, and will also result in some, comparatively speaking, small expense, yet neither fact furnishes an answer to the application of defendant in error."

In the case of *Olsen v. Smith*, 195 U. S., 332, it was decided that a State statute, passed by the Legislature of Texas, regulating pilotage, was not unconstitutional. It was contended that the act was in conflict with the clause of the Constitution of the United States giving to Congress the right to regulate commerce between the States. Mr. Justice White, delivering the opinion of the Court, in speaking of this contention, said, on page 341:

> "The unsoundness of this contention is demonstrated by the previous decisions of this Court, since it has long since been settled that even although State laws concerning pilotage are regulations of commerce, 'they fall within the class of powers which may be exercised by the States until Congress has seen fit to act upon the subject.'"

The case of *Penn. Ry. Co. v. Hughes*, 191 U. S., 477, is a case in point. The authorities therein cited and that case are called to the Court's attention.

In the *Railroad Commission Cases*, 116 U. S., 307, at p. 335, it is said:

> "Legislation of this kind to be unconstitutional must be such as will necessarily amount to, or operate as, a regulation of business *without the State* as well as within.
>
> "It is well settled that the State may make valid enactments in exercise of its legislative power to promote the welfare and convenience of its citizens, although in their operation they may have an effect upon interstate traffic."

*Penn. R. R. Co. v. Hughes*, 191 U. S., 477.

Referring to *Mo., K. & T. R. Co. v. Haber*, 169 U. S., 613, and *Chicago, M. & N. R. R. Co. v. Solan*, 169 U. S., 133, the following language is quoted from the opinion of Justice Gray in the latter case:

> "A carrier exercising his calling within a particular State, although engaged in the business of interstate commerce, is answerable according to the law of the State for acts of nonfeasance committed within its limits. If he fails to deliver goods to the proper consignee at the right time and place, or if by negligence in transportation he inflict injury upon the person of a passenger brought from another State, the right of action for the consequent damage is given by the local law. It is equally within the power of the State to prescribe the safeguards and precautions foreseen to be necessary and proper to prevent by anticipation those wrongs and injuries which, after they have been inflicted, the State has power to redress and punish. The rules prescribed for the construction of railroads and for their management and operation, designed to protect persons and property, otherwise endangered by their youth, are entirely within the local law. They are not in themselves regulations of interstate commerce, although they control, in some degree, the conduct and liability of those engaged in such commerce."

169 U. S., at p. 137.

Four car-loads of coal having arrived at their place of destination at Greensboro, N. C., and it appearing from the findings of the Master that they could have been delivered upon the siding of the ice and coal company and unloaded expeditiously, so that the railway company would not be subject to any charge for the detention of the cars, and that the same could within three hours have been returned into the channels of trade, it was no interference with the commerce of the railway company to require it to place the cars on the siding which had been built under an implied, if not express, contract for the mutual convenience of the railway company and the ice and coal company.

There has been no act of Congress discovered by us, disclosing that it has exercised the powers conferred upon it by the Constitution of the United States, with respect to the subject upon which the North Carolina Corporation Commission acted when it ordered, on October 31 and December 10, 1903, four car-loads of coal to be placed on the private siding of the Greensboro Ice and Coal Company.

The findings of fact in this case, to which there is no exception by the appellee, show that interstate commerce was not being interfered with. The purpose of this suit is to protect the Southern Railway Company against valid, reasonable and proper orders. The interstate commerce clause of the Constitution of the United States cannot be invoked by the Southern Railway Company to secure protection against the Legislature of North Carolina. Neither directly nor indirectly is commerce trammeled by the action of the North Carolina Corporation Commission, and therefore the Southern Railway Company has no just ground for complaint.

## IV.

## WHETHER THE ACT OF THE GENERAL ASSEMBLY OF NORTH CAROLINA CONSTITUTING THE CORPORATION COMMISSION WAS VOID AS BEING IN VIOLATION OF THE CONSTITUTION OF THE STATE.

(The ground of appeal by the Southern Railway Company).

The act under which the North Carolina Corporation Commission was organized, and is exercising its functions for the benefit of the people of the State, is, in its essential particulars, so far as it relates to railway companies, but a rescript of the laws establishing the North Carolina Railroad Commission and making it a court of record (Laws of 1891, chapter 320 and chapter 498); and the acts establishing both the Railroad Commission and the Corporation Commission have been expressly declared to be constitutional by the Supreme Court.

And *like statutes*, under which Railroad Commissions in other States have been organized, have been upheld by this Court. *Railroad Commission Cases*, 116 U. S., 307.

The Supreme Court of North Carolina held, in *Caldwell v. Wilson*, 121 N. C., 425: "The Railroad Commission established by chapter 320, Acts of 1891, is purely of legislative origin and is an *administrative* and not a *judicial* court, and though, by subsequent statute, the Commission was made a court of record, the object and effect of such amending statute was simply to give authenticity to its records and proceedings and added nothing to its duties and powers."

*Express Co. v. Railroad*, 111 N. C., 463.
*Railroad Company v. Telegraph Co.*, 113 N. C., 213.
*Leavell v. Telegraph Co.*, 116 N. C., 211.
*Pate v. Railroad Co.*, 122 N. C., 877.

*Abbott v. Beddingfield*, 125 N. C., 256.
*Corporation Commission v. Railroad*, 127 N. C., 283.
*Corporation Commission v. Railroad*, 139 N. C., 126 (131).

It is submitted that this Court is concluded by the decisions of the Supreme Court of North Carolina upon this point.

In the case of *Duncan v. McCall*, 139 U. S., 449, the petitioner contended that a certain statute was void because it had not been enacted in accordance with the requirements of the Constitution of Texas. The following is the head-note of the decision:

> "2. The decision of the State courts on the question as to what are the laws of a State is binding upon those of the United States.
>
> "3. Whether certain statutes of a State have or have not binding force, it is for the State to determine, and that determination in itself involves no infraction of the Constitution of the United States, and raises no Federal question giving the courts of the United States jurisdiction."

In *Leeper v. Texas*, 139 U. S., 462, Mr. Chief Justice Fuller, in speaking for the Court, said:

> "Whether the statutes of a Legislature of a State have been duly enacted in accordance with the requirements of the Constitution of such State is not a Federal question, and the decision of State courts as to what are the laws of the State is binding upon the courts of the United States," citing *South Ottawa v. Perkins*, 94 U. S., 260, 268 (24: 154, 157); *Post v. Kendall County Supvrs.*, 105 U. S., 667 (26: 1204); *Norton v. Shelby County*, 118 U. S., 425, 440 (30: 178, 185); *Atlantic and G. R. Co. v. Georgia*, 98 U. S., 359, 366 (25: 185, 188); *Baldwin v. Kansas*, 129 U. S., 52, 57 (32: 640, 642).
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> *O'Neill v. Vt.*, 144 U. S., 323.
> *McNulty v. California*, 149 U. S., 645.
> *Lambert v. Barrett*, 157 U. S., 697.

*Bergemann v. Backer*, 157 U. S., 655.
*Kohl v. Lehlbach*, 160 U. S., 293.
*Howard v. Fleming*, 191 U. S., 126.

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